

Clay Cullen d/b/a Arctic Framing, Inc. and United Brotherhood of Carpenters and Joiners of America, Local 210, AFL-CIO. Case 34-CA-5340

February 28, 1994

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND TRUESDALE

On February 26, 1992, the National Labor Relations Board issued its Decision and Order in Case 34-CA-5340,¹ which, inter alia, directed the Respondent to reimburse various benefit funds and make unit employees whole for its failure to abide by the terms of successive collective-bargaining agreements effective May 1, 1988, through April 30, 1991, and May 1, 1991, through April 30, 1994. On December 3, 1992, the United States Court of Appeals for the Second Circuit entered its judgment enforcing the Board's Order.² A controversy having arisen over the amounts due under the Board's Order, as enforced by the court, the Regional Director for Region 34 on August 10, 1993, issued and caused to be served on the Respondent a compliance specification and notice of hearing alleging the amounts due under the terms of the Board's Order and notifying the Respondent that it must file a timely answer complying with Section 102.56 of the Board's Rules and Regulations. Subsequently, on September 28, 1993, the Respondent filed its answer to the compliance specification,³ denying generally certain allegations, and denying the remaining allegations on the grounds that the Respondent was not obligated under the terms of the collective-bargaining agreements or that the compliance specification calculations were "erroneous."

On October 12, 1993, the General Counsel filed the instant Motion for Summary Judgment and for issuance of Board Supplemental Decision and Order, with exhibits attached. The General Counsel alleges that the Respondent's answer fails to comply with the Board's Rules and Regulations. On October 21, 1993, the Board issued an order transferring proceedings to the Board and Notice to Show Cause why the General

Counsel's motion should not be granted. The Respondent has not filed a response to the Notice to Show Cause.

On the entire record in this case, the Board makes the following

Ruling on Motion for Summary Judgment

Section 102.56(b) and (c) of the Board's Rules and Regulations states:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing evidence supporting the allegation.

The Respondent's answer fails to raise any issue with respect to the compliance specification warranting a hearing. The answer generally denies paragraph 1 of the specification which alleges that the backpay period begins on January 30, 1991, and ends on December 31, 1991, when the Respondent ceased all operations.

¹ 306 NLRB No. 77 (not reported in Board volumes).

² No. 92-4171 (unpublished).

³ The compliance specification sent by certified mail was returned "unclaimed" by the United States Postal Service. Thereafter, by letter dated September 2, 1993, the Respondent was advised that, if no answer was received in the Regional Office by September 10, 1993, the Regional Office would seek summary judgment. On September 9, 1993, the Respondent was provided another copy of the compliance specification and given an extension of time to September 18, 1993, to file its answer. Thereafter, the Respondent informed the Regional Office that it intended to file an answer by September 28. By letter dated September 21, 1993, the Respondent's counsel entered his appearance and requested certain information concerning the case in order to prepare the answer.

In the underlying case, the Board found that the Respondent failed to apply the terms and conditions of the collective-bargaining agreement beginning on January 30, 1991.⁴ Similarly, in response to the allegations of paragraphs 2, 3, and 4 of the specification, which allege the specific provisions of the collective-bargaining agreements that form the basis for subsequent allegations, and paragraphs 5(a) and 5(b), which set forth the formula and detail the method for determining wages owed, the Respondent states only that it was not “obligated” under the collective-bargaining agreements. In the underlying case, however, the Board found that the Respondent was bound to the agreements.⁵ Thus, the facts supporting the allegations of paragraphs 1, 2, 3, 4, and 5(a) and 5(b) have already been decided and may not be relitigated in this proceeding. *Schumaker Bros. Operating Engineers*, 300 NLRB 802 (1990); *Ford Bros.*, 284 NLRB 211, 213 (1987); *Brown & Root, Inc.*, 132 NLRB 486, 492 (1961), *enfd.* 311 F.2d 447, 451 (8th Cir. 1963).

⁴ 306 NLRB No. 77, slip op. at 4. To the extent the Respondent is denying that the backpay period ends on December 31, 1991, when the Respondent ceased all operations, the denial is inadequate because the matter is within the Respondent’s knowledge and the Respondent has failed to offer an alternative premise. See, e.g., *J. Huizinga Cartage Co.*, 308 NLRB 106 (1992); *Schumaker Bros. Operating Engineers*, 300 NLRB 802 (1990).

⁵ 306 NLRB No. 77, slip op. at 3–4.

The Respondent denies paragraphs 5(c), 5(d), 5(e), 6, 7(b), 8, and 9, which detail and then summarize the various calculations, stating only that the calculations are “erroneous” and “misstated.”⁶ These matters are within the Respondent’s knowledge and control and its failure to set forth fully its position as to the applicable premises or to furnish appropriate supporting figures or alternative calculations is contrary to the specificity requirements of Section 102.56(b) of the Board’s Rules and Regulations.⁷

Accordingly, pursuant to Section 102.56(c) of the Board’s Rules, we deem the Respondent to have admitted the allegations of the compliance specification and we grant the General Counsel’s Motion for Summary Judgment.

ORDER

The National Labor Relations Board orders that the Respondent, Clay Cullen d/b/a Arctic Framing, Inc., New Milford, Connecticut, its officers, agents, successors, and assigns, shall make whole the unit employees and pay into the benefit funds the amounts as stated in the compliance specification.

⁶ The Respondent neither admits nor denies par. 7(a), stating only that “the calculation speaks for itself.”

⁷ See, e.g., *J. Huizinga Cartage Co.*, *supra*; *Schumaker Bros. Operating Engineers*, *supra*.